

Message Text

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PAGE 01 BERLIN 01653 251231Z

42

ACTION EUR-25

INFO OCT-01 ISO-00 L-03 ACDA-19 SCI-06 EPA-04 CEQ-02 NEA-10

DRC-01 IO-13 NIC-01 CIAE-00 PM-07 INR-10 NSAE-00

PA-03 RSC-01 PRS-01 SPC-03 USIA-15 TRSE-00 SAJ-01

DODE-00 NSC-10 SS-15 SCEM-02 /153 W

----- 055452

R 251200Z SEP 73

FM USMISSION BERLIN

TO AMEMBASSY BONN

SECSTATE WASHDC 2445

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L BERLIN 1653

E.O. 11652: GDS

TAGS: PGOV, WB, GW, UR

SUBJECT: FRG ENVIRONMENTAL OFFICE

REF: A. STATE 189359

B. BERLIN 1640

1. WE ASSUME REFTELS CROSSED, BUT FOLLOWING COMMENTS
ARE KEYED TO QUESTIONS CONTAINED PARA 4 OF REF A:

A. WE CONSIDER "ESTABLISHED PROCEDURES" TO BE
THOSE WHICH PROVIDE THAT FRG GOVERNMENTAL DECISION IS
GIVEN EFFECT IN BERLIN NOT DIRECTLY BUT THROUGH BERLIN
ACTION INCLUDING ALLIED REVIEW. ALLIED MISSIONS
CONSIDER THAT ALLIED CONSENT, RATHER THAN MERE REVIEW,
REQUIRED IN THIS MATTER: OTHERWISE IT MIGHT BE ASSERTED FRG
GOVERNMENTAL OFFICE WOULD BE ESTABLISHED IN BERLIN
AND GIVEN MANDATE TO OPERATE BY VIRTURE OF A DECREE
ISSUED BY A FEDERAL MINISTER PURSUANT TO A POWER NOT
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PAGE 02 BERLIN 01653 251231Z

CONFERRED ON HIM BY BERLIN LEGISLATION AND WITHOUT

AUTHORIZING ACTION BY ANY BERLIN AUTHORITY. THAT, IN LAST ANALYSIS, COULD BE INTERPRETED AS EXERCISE OF DIRECT GOVERNMENTAL AUTHORITY OVER BERLIN BY FRG. ON OTHER HAND, ALLIED BK/L, ONCE ISSUED, PERMITS US TO DEMONSTRATE THAT OFFICE OWES ITS EXISTENCE IN BERLIN TO BERLIN-BASED RATHER THAN BONN-BASED ACTION.

B. WE HAVE CONCLUDED FROM REVIEW OF TERMS OF MINISTERIAL DECREE THAT FRG ENVIRONMENTAL AGENCY WOULD NOT EXERCISE STATE AUTHORITY OVER BERLIN OR ENGAGE IN ACTIVITIES WITHIN AREA OF ALLIED RESERVED RIGHTS. THAT IS WHY WE CONSIDERED IT APPROPRIATE FOR ALLIES TO AUTHORIZE ITS LOCATION AND OPERATION IN BERLIN.

C. SIMPLE ALLIED AUTHORIZATION TO SENAT TO REPUBLISH ERLASS WOULD NOT CONFORM MORE CLOSELY TO PAST PRECEDENTS SINCE NEITHER SENAT RESEARCH NOR OURS HAS TURNED UP ANY PRECEDENTS FOR ESTABLISHMENT OF FRG GOVERNMENTAL OFFICE IN BERLIN BY MINISTERIAL DECREE RATHER THAN BY LEGISLATION THAT IS SUBJECT TO NORMAL ALLIED REVIEW. ALLIED MISSIONS THEREFORE REGARDED PROCEDURES REPORTED IN OUR 1631 AS MINIMUM NECESSARY TO GIVE COVER OF BERLIN ACTION TO ESTABLISHMENT OF INTERIM OFFICE. IT WILL BE RECALLED, HOWEVER, THAT DRAFT BK/L INCORPORATES MINISTERIAL DECREE BY REFERENCE IN ORDER TO DEFINE MANDATE WITHIN WHICH OFFICE WILL OPERATE.

D. REFERENCE TO STATUS AND SECURITY WAS INSERTED IN DRAFT SINCE WE CONSIDERED THESE TO BE MOST IMPORTANT AREAS OF ALLIED RESERVED RIGHTS AND THEREFORE APPROPRIATE TO MENTION IN SETTING FORTH GROUND RULES FOR OPERATION OF AGENCY WITH POLITICAL SENSITIVITY OF ENVIRONMENTAL OFFICE. REFERENCE TO QA IS INTENDED TO SERVE TWO PURPOSES: FIRST TO POINT OUT THAT LOCATION AND OPERATION OF ENVIRONMENTAL OFFICE IN BERLIN IS CONSISTENT WITH MAINTENANCE AND DEVELOPMENT OF TIES BETWEEN FRG AND BERLIN PROVIDED FOR BY PARAGRAPH 1 OF ANNEX II OF QA, AND, SECOND, TO RECALL THAT OPERATIONS OF OFFICE MUST BE CONSISTENT WITH LIMITATIONS IMPOSED ON FEDERAL

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PAGE 03 BERLIN 01653 251231Z

PRESENCE IN PARAGRAPH 2 OF ANNEX II, NAMELY THAT IT MUST NOT PERFORM ACTS IN EXERCISE OF DIRECT STATE AUTHORITY OVER BERLIN.KLEIN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 25 SEP 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973BERLIN01653
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS KELEIN
Errors: N/A
Film Number: n/a
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730913/aaaaajmc.tel
Line Count: 110
Locator: TEXT ON-LINE
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A. STATE 189359
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 07 AUG 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <07-Aug-2001 by kelleyw0>; APPROVED <20 FEB 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FRG ENVIRONMENTAL OFFICE
TAGS: PGOV, WB, GE, UR
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005